IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.363 OF 1989

1. The Municipal Corporation,
   Greater Bombay; Bombay.
2. D.M.Sukthankar;
3. V.S.Jakkal. ... Appellants;
   (Original Respondents Nos.1 to 3)

V/s.

1. State Bank of India,
   M. Cama Road, Bombay;
2. Mrs. Tarabai Madhavrao Ghatate;
3. Mr. Narayanrao Madhavrao Ghatate;
4. Mr. Shridhar Madhavrao Ghatate;
5. Mrs.Laxmibai Krishnarao Ghatate. ... Respondents.
   (Original Appellants No.1)

(Nos.2 to 5-Original Respondent Nos. 4 to 7)

Mr.N.V.Walawalkar with J.Xavier, advocate for Appellant.

Mr. L.M.Acharya i/b M/s Little & Co.for Respondent No.1.

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **OCTOBER 28, 2004**
JUDGEMENT PRONOUNCED ON: **DECEMBER 17, 2004**

JUDGMENT:

. The present first appeal impugns the Judgment of the Small Causes Court in the appeal filed by the First Respondent Bank under section 217 of the Mumbai Municipal Corporation Act, 1888. Appellant No.1 is the Municipal Corporation of Greater Bombay and Appellant Nos.2 and 3 are its officers. The facts giving rise to the present appeal are as follows.

2. The respondents No.2 to 5 i.e. Original Respondents No.4 to 7 are the owners of the building bearing No.A Ward No.1315(3) Street No.158, Maharshi Karve Road, Bombay 400 020. The said building consists of Ground and six upper floors. Respondent No.1 which is State Bank of India occupies one of the flats on the ground floor of the building as a tenant of respondent Nos.2 to 5. The bank came into possession of the flat on 1st April, 1980 when respondent Nos. 2 to 5 let out the flat to the respondent No.1 bank for a term of 9 1/2 years on payment of Rs.11,970/- per month. The Bank agreed to pay municipal taxes besides monthly rent of Rs.11,970/-. The appellants fixed rateable value of the property at Rs.1,60,280/-. In 1983-84 rateable value fixed by the appellants was raised to Rs.2,20,975/-. The Bank filed a complaint with Assessor and Collector of the Appellant Corporation on 7th April, 1984 complaining of the increase in the rateable value. The Investigating Officer reduced the rateable value to Rs.2,20,350/-. Aggrieved by this decision, the Respondent Bank filed Municipal Appeal No.70 of 85 in the Court of the Chief Judge, Small Causes Court.

3. The Respondent Bank contended that the building was in existence since 1940 and was first let out in

1948. According to the Bank, the standard rent had already been fixed in respect of the flat at the rate of Rs.264.47 per month sometime in 1966 and therefore, the rateable value could be computed only on the basis of this amount and not on the actual rent paid by the bank to the landlords. The Bank contended that rateable value charged on the property was exorbitant as residential and office premises in the area were charged at a much lower rate.

4. The appellants resisted the appeal preferred by the bank, by contending that they had correctly assessed the rateable value and there was no need for the Court of Small Causes to reduce the amount claimed by them. According to the appellants, the flat was initially let out to some other tenant at a lower monthly rent. The standard rent had been fixed for the flat at Rs.264.47 in 1966 on the basis of the application for standard rent filed by the erstwhile tenant. After the termination of the tenancy of the erstwhile tenant, the bank was inducted as a tenant on a monthly rent of Rs.11,970/-. The bank had also agreed to pay Municipal Taxes besides the monthly rent and therefore, according to the appellants the computation made by the corporation was correct. The Corporation also contended in its reply that the Standard Rent fixed in 1966 could

not be considered as the basis for fixing of the rateable value when tenancy has changed hands.

5. After evidence was led before the Small Causes Court, the appeal was allowed and the rateable value of the property was fixed at Rs.35,350/-. The Small Causes Court held that since the Standard Rent had already been fixed at Rs.264.46, the rateable value could be assessed only on this amount and not on the actual rent paid by the respondent bank to the landlords. As regards the contentions of the corporation that the bank had no locus standi to file the appeal, the Small Causes Court held that since the bank had accepted the liability of paying Municipal Taxes under section 154 of the Mumbai Municipal Corporation Act, the bank was in fact the person who was really affected and aggrieved by the fixation of the rateable value and therefore, it had locus to file the appeal. The Small Causes Court also negatived the contention of the Corporation that the appeal was not maintainable since the landlord had not been joined as a party to the appeal. The small causes Court fixed the rateable value at Rs.35,350/-.

6. Being aggrieved by this Judgment, the Corporation has preferred the present appeal.

7. The advocate appearing for the bank submits that the bank is no longer in possession of the premises as it vacated the same in 1995. There has been no real opposition on behalf of the bank to the present appeal.

8. Mr.Walawalkar, appearing for the Corporation submits that the bank had no locus standi to challenge annual letting value and rateable value of the premises. He further submits that the standard rent once fixed could not be the basis for computation of annual letting value and rateable value for all times in future even when the old tenant had left premises and new tenancy had been created on a higher contractual rent. The learned advocate urges that the standard rent fixed between the old tenant and the landlord cannot remain the same when new a tenancy on different terms and higher rent is created.

9. While considering the submissions of the learned advocate that the bank had no locus to file the appeal under section 217 of the Mumbai Municipal Corporation Act, certain provisions of law would have to be borne in mind. The primary responsibility of payment of property taxes is that of the landlord except where the premises which are possessed, are held from the Government or from the Corporation. However, if the tenant agrees to

pay the taxes, he is entitled to credit of the same if he is rent payer. In the case of **H.N.Mirachandani V/s. Mumbai Municipal Corporation & Anr. reported in 1995 Mah. L.J.422**, a learned single Judge of this Court (Dhanuka,J) has taken view that a party who is genuinely aggrieved by the Judgment and Order can always file appeal before the Appellate Court. While construing position of section 217 of the Act it has been held that the section cannot be interpreted in a narrow restrictive manner. The learned Judge has held that the individual holder of an ownership flat or a tenant thereof has locus standi to file appeal against the impugned order, to reduce rateable value or for enhancing the same, in so far as his flat is concerned, whether held on ownership basis or as a tenant. It has also been held that even though party who were genuinely aggrieved by the order in the original proceedings can always move the Appellate Court without making the parties to the original proceedings party to the appellate proceedings. Therefore, the submissions of Mr. Walawalkar that the bank had no locus standi to file the municipal appeal cannot be accepted. The bank was the genuinely affected party since it had agreed to pay property tax besides the rent payable to the landlord. Any increase in the property tax on account of the rateable value being increased would obviously

affect the bank prejudicially and therefore, it has locus to file municipal appeal under section 217 of the Act.

10. This takes me to the main submission of Mr. Walawalkar that the standard rent fixed in 1966 could not be the basis for computing the rateable value when the tenancy had changed hands and a new tenant namely the bank in this case had been inducted as tenant from 1980 onwards. There is no dispute that in earlier suit filed by the landlords i.e., Respondent Nos.2 to 5 herein against the erstwhile tenant in respect of the same flat as the one occupied by the bank, standard rent of the premises was fixed at Rs.264.47 per month. After termination of that tenancy, the bank entered into an agreement of tenancy with the landlord. The bank agreed to pay the monthly rent of Rs.11,970/- plus municipal taxes. Therefore, there is no dispute that the contractual rent had been increased after the bank was inducted into the premises. The question is whether the rateable value can be restricted to the standard rent which was fixed between the erstwhile tenant and the landlord.

11. Section 154 of the Mumbai Municipal Corporation Act lays down the methodology of determining the

rateable value. It is to be fixed on the basis of the annual letting value for which a land or building might reasonably be expected to be let out from year to year. In determining annual letting value of a building, it is necessary to ascertain what the building is capable of fetching in terms of rent. The annual rent paid for the property is exclusive evidence of the value of the property though such annual rent may serve as an indication as to what hypothetical tenant can afford to pay. It is the hypothetical rent which would be paid that is required to be considered as the annual letting value on which basis rateable value could be computed. By a catena of judgments of the Supreme Court, it has been laid down that the rateable value has to be based on the standard rent of the premises and could not be in excess of such standard rent.

12. In the case of **Filmistan Pvt.Ltd. V/s. Municipal Commissioner Gr. Bombay, 1972 Mh.L.J.896,** this Court construed provisions of Section 154 of the Mumbai Municipal Corporation Act and Section 5(10)(b)(iii) of the Bombay Rent Act. The Division Bench of this Court held that under section 5(10)(b)(iii) of the Bombay Rent Act, in case of premises first let after 1st September, 1940 the agreed rent is the standard rent which is however subject to

the provisions of Section 11 of the Act. Until an application is made under section 11 for having standard rent recalculated and refixed, the agreed rent remains the standard rent and the landlord is justified in the recovery of the contractual rent from the tenant. If the premises are let out after 1st September, 1940, the Municipal Corporation would be justified in fixing the rateable value on the basis of the agreed rent unless and until the standard rent is recalculated and refixed on an application under section 11 of the Rent Act. The Division Bench while arriving at this conclusion considered the cases of **(i) Corporation of Calcutta V/s. Smt.Padma Debi, AIR 1962 S.C.151, (ii) Calcutta Municipality v/s L.I.C. India AIR 1970 S.C.1417 and (iii) Guntur Muni. Council V/s Rate-Payers' Association AIR 1971 S.C. 353.** The Division Bench noted that the Supreme Court in Padma Debi's case had held that while computing rateable value under the Calcutta Municipal Act, hypothetical rent which can reasonably be expected when a building is to be let out has to be considered and that hypothetical rent cannot exceed standard rent or statutory rent. However, the Division Bench observed that the provisions of West Bengal Premises Rent Control Act, 1950 were different from the Bombay Rent Act in respect of the definition of Standard Rent. The Division Bench was of the view that the actual rent

would be deemed to be the standard rent for fixing rateable value unless and until an application is made under section 11 of the Bombay Rent Act for fixing the standard rent. However, by an earlier judgement of this Court in the case of **Filmistan Pvt.Ltd. Vs. Municipal Commissioner for Greater Bombay reported in 1970 Mah.L.J.page 865** another Division Bench had held that rateable value of property cannot be fixed on a rent higher than its standard rent under the prevailing Rent Act. The Division Bench held that it would be incongruous to consider fixation of rent beyond the limits fixed by a penal legislation as reasonable and to determine the rateable value on this amount. The Bombay Rent Act restricts the amount of rent which the landlord can claim from tenant which amount is termed as Standard Rent. The Division Bench therefore, was of the view that the reasonable expectation of the landlord in regard to the rent which his property would fetch cannot exceed what he can lawfully recover from his tenant under the Rent Act. Therefore, while considering what a hypothetical tenant can reasonably be expected to pay for the property by way of rent, regard must necessarily be had to what would be the standard rent of the premises. The Division Bench has further held that while considering what would be the standard rent for fixing rateable value of the property it cannot be

assumed that the agreed rent would be a measure of standard rent.

13. As stated earlier in the case of **Corporation of Calcutta V/s Padma Debi(Supra)**, the Supreme Court considered the provisions of Calcutta Municipal Act and West Bengal Premises Rent control(Temporary Provisions) Act,1950. The Supreme Court held that a combined reading of the provisions of the Rent Control Act left no room for doubt that a contract for payment of rent at a rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected rent above the rate of the standard rent. In these circumstances, the Supreme Court was of the view that it was necessary to determine what would be the reasonable rent which a landlord could expect from hypothetical tenant. Receipt of any rent higher than standard rent under the Act invited penal consequences for the landlord. Apex Court therefore, came to the conclusion that the rateable value would have to be fixed on the basis of the standard rent which could reasonably be expected from the hypothetical tenant.

14. Subsequently in **New Delhi Municipal Committee V/s. M.N.Soi & Anr. reported in AIR 1977 SC 302,** the

Apex Court considered the provisions of the Delhi Rent Control Act. The Apex Court has held that the concept of reasonableness of expectation of rent must take into account the penal law of the State. It has further held that it is not the expectation of a landlord who takes the risk of prosecution and punishment which the violation of the law involves. The expectation of the landlord who is prudent enough to abide by the law that it serves as a standard of reasonableness for purposes of rating.

15. In the case of **Balbir Singh & Ors. V/s.M/s. M.C.D. and others, AIR 1985 S.C.339,** the Supreme Court again considered how the rateable value of the property should be determined. The Apex Court has observed thus:

> It would therefore seem that when the rateable value of a building consisting of distinct and separate units of occupation is to be assessed, the standard rent of each unit would have to be determined on the principles set out above and within the upper limit fixed by the standard rent, the assessing authorities would have to determine, the rent which the owner may reasonably expect to get if such unit were let out to a hypothetical tenant and in arriving at this determination, the assessing authorities would have to take into account the same factors which we have already discussed in the proceeding paras of this judgment while dealing with the question of assessment of self-occupied properties. The sum total

> of the rent which the owner may reasonably expect to get from a hypothetical tenant in respects of each distinct and separate units of occupation comprised in the building are self-occupied or tenanted. The only difference in case of a distinct and separate unit of occupation which is tenanted would be that, subject to the upper limit of the standard rent, the actual rent received by the owner would furnish a fairly reliable measure of the rent which the owner may reasonably expect to receive from a hypothetical tenant, unless it can be shown that the actual rent so received is influenced by extra commercial considerations."

In the case of *Municipal Corporation of Greater Bombay V/s Kamla Mills Ltd.*, **AIR 2003 S.C.2998,** the Apex Court again considered the principles for determination of rateable value of property and observed thus:

> 23. The case before us is governed by the provisions of a Rent Restrictions Legislation viz. The Bombay Rent Act. The Bombay Municipal Corporation Act neither contains a statutory definition of 'rateable value' nor does it lay down the manner in which the rateable value has to be computed, as distinguished from the situation in Commissioner V. Griha Yajmanule Samkya and ors. The Bombay Municipal Corporation Act neither contains a defining clause, nor a non-obstante clause, which would hold the field, notwithstanding the definition of 'standard rent' in the Bombay Rent Act. Therefore, prima facie, this would be a case which would fall within the general principles laid down by the series of judgments commencing Padma Devi(supra) and ending with Srikant Kashinath Jituri(supra) AIR 2001 SC 2046: (2001(5) SCC 651): 2001 AIR SCW 1956. AIR 1962 SC 151, AIR 1995 SC 288: 1994 AIR SCW 4453.
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> 24. The contention of the learned counsel

> for the respondent that the rateable value to be fixed under Section 154(1) of the Bombay Municipal Corporation Act is limited by the measure of the standard rent within the meaning of Section 5(10) of the Bombay Rent Act appears to be justified, particularly in view of the fact that Section 7 of the Bombay Rent Act makes it illegal to claim of any rent or any licence fee in excess of the standard rent. Thus, in determining what would be the "amount of the annual rent for which such land or building might reasonably be expected to let from year to year ' for the premises meaning thereby land or building, since both are included in the definition of the premises in Section 2(3)(g), one has to keep in mind that determining anything contrary to law could not be "reasonable" as a hypothetical tenant would hardly be inclined to pay a rent in excess of the standard rent, though, on account of circumstances which may be peculiar to the property, the reasonable rent which may be offered by the hypothetical tenant could even be less than standard rent."

Therefore, there can be no doubt that the rateable value has to be fixed on the basis of the hypothetical rent which tenant would pay to the landlord and on the basis of the annual letting value to a hypothetical tenant. When there is a restrictive provision in the Rent Control legislation, the rent which the landlord can reasonably expect to receive is the standard rent. Since demanding and expecting higher rent would in fact be an offence, the question now is whether the standard rent fixed in respect of certain premises will be the

same for all times to come or will be different when there is a change of tenancy.

16. The Standard rent is determined on certain principles laid down by Judicial pronouncements. In **Balbir Singh Case,** the Apex Court considered the manner of determining the standard rent. It held that the Controller of Rents is empowered to fix such rent as would be reasonable having regard to the situation, locality and the condition of the premises and the amenities provided to the tenant. However, while fixing such rent, the Controller does not enjoy unfettered discretion to do what he likes and he is bound to take into account the standard rent payable in respect of similar or nearly similar premises in the locality. While fixing the Standard Rent, the Controller is expected to take into account the standard rent payable in respect of similar or nearly similar premises. The Apex Court has held that apart from discharging the function of affording guidance to the Controller in fixing reasonable rent, this requirement also seeks to ensure that there is no wide disparity between the reasonable rent of the premises fixed by the Controller and the standard rent of similar or nearly similar premises situate in the locality. The Apex Court observed as under :

> The process of reasoning which the Controller would have to follow in fixing reasonable rent would, therefore, be first to ascertain what is the standard rent payable in case of similar or nearly similar premises in the locality, and then to consider how far such standard rent in its application to the premises needs adjustment having regard to the situation, locality and condition of the premises and the amenities provided therein. The reasonable rent so determined would be the standard rent of the premises fixed by the Controller. There may however, be cases where there are no similar or nearly similar premises in the locality and in such cases guideline to the Controller would not be available and the Controller would have to determine as best as he can what rent would be reasonable having regard to the situation, locality and condition of the premises and the amenities provided therein. But such cases would by their very nature be extremely rare and even there, the Controller would not be on an unchartered sea: he would have to fix the reasonable rent of the premises taking into account the standard rent of similar or nearly similar premises in the adjoining locality and making necessary adjustments in such standard rent.

17. In the present case, the standard rent was fixed in respect of the tenancy in an earlier litigation between the erstwhile tenant and the landlord. It was determined at the rate of Rs.264.47. The standard rent need not be a static entity and would change with the change of tenancy. Thus obviously because a new tenancy

is created on the basis of new facilities and amenities given to the tenant, the standard rent is required to be determined on the basis of the surrounding circumstances, location of the premises and the value of the property in the market. In the present case, the Small Causes Court has lost sight of the fact that tenancy of the premises has changed in 1980 when the bank was inducted as a tenant. The standard rent had been determined at Rs.264.47 on the basis of the facilities and circumstances prevailing when the old tenancy was created in 1948. However, this amount cannot be binding as the standard rent in respect of the new tenancy created between the bank and the landlord. Although no application for standard rent under section 11 was filed, probably because it suited both the landlord and the bank, it was for the Small Causes Court to determine what could be the standard rent while fixing rateable value. As held in the case of **Dr. Balbir Singh (supra),** the Court will have to consider the terms of the tenancy, the Standard rent fixed in respect of similar properties in the vicinity and what should be the reasonable amount that a hypothetical tenant would pay. There is no doubt that the actual rent paid by a tenant need not be the standard rent as held in various decisions of the Supreme Court. This is because the actual rent may be either higher or lower

than the standard rent. In such a case, the Small Causes Court has to determine what could be the standard rent and to compute rateable value on that basis. The Small Causes Court in the present case has computed the rateable value on the standard rent fixed between the erstwhile tenant and the landlord. In my view when the circumstances changed the standard rent cannot remain static and must change with the change in tenancy if the terms of the new tenancy are different and standard rents in the area are different. Therefore, the Small Causes Court was in error in computing rateable value on the standard rent fixed in the earlier suit at Rs.264.47/- per month. The Judgment is therefore, required to be set aside and the matter remanded for a fresh trial.

18. However evidence will have to be produced on record before the trial Court so as to enable the court to consider what should be the standard rent. As held in the case of **Municipal Corporation of Gr. Mumbai V/s Kamla Mills**, it is the responsibility of the assessee to place evidence on record to indicate what should be the standard rent. The burden of proving this fact, while objecting to the rateable value fixed by the Municipal Corporation, is always on the assessee and it is

therefore necessary for the assessee to produce evidence on record in support of his contention that the rateable value fixed by the Corporation was exorbitant. The burden will be on the Respondents in the present case to establish what should be the standard rent.

19. First appeal allowed. The Municipal Appeal is remanded to the Small Causes Court for redetermination of the rateable value. The Small Causes Court will decide the appeal expeditiously and in any case before 30th September, 2005.